

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

FREDDIE DONNELL ROSS, #355092

PETITIONER

VERSUS

CIVIL ACTION NO. 1:12-cv-87-HSO-JMR

SHERIFF MELVIN BRISOLARA

RESPONDENT

**ORDER ADOPTING REPORT AND RECOMMENDATION,
GRANTING RESPONDENT'S MOTION TO DISMISS, AND DISMISSING
PETITION FOR WRIT OF HABEAS CORPUS**

This cause comes before the Court on the Report and Recommendation [15] of Chief United States Magistrate Judge John M. Roper, entered in this cause on July 24, 2012, and the Motion to Dismiss [12] filed by Respondent on May 3, 2012. The Magistrate Judge reviewed Petitioner's Petition for Writ of Habeas Corpus [9] filed pursuant to 28 U.S.C. § 2254, and Respondent's Motion to Dismiss [12], and determined that the Motion to Dismiss [12] should be granted. Report and Recommendation [15], at p. 4. The Magistrate Judge recommended that Petitioner's Petition for Writ of Habeas Corpus be dismissed as procedurally barred. *Id.*

Petitioner filed no response in opposition to Respondent's Motion to Dismiss [12]. Nor has he filed any objection to the Magistrate Judge's Report and Recommendation [15].¹ Where no party has objected to the Magistrate Judge's

¹The envelope containing the Report and Recommendation was returned as undeliverable [16]. Petitioner has apparently failed to keep his address up to date with the Court. He was warned that his failure to advise the Court of a change of address would be deemed a purposeful delay and contumacious act, and may result in his case being dismissed. *See, e.g.*, Order [4], at p. 2; Order [7], at pp. 1–2; Order [10], at p. 2.

Report and Recommendation, the Court need not conduct a de novo review of it. 28 U.S.C. § 636(b)(1) (“a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.”). In such cases, the Court applies the “clearly erroneous, abuse of discretion and contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge’s findings are not clearly erroneous, nor are they an abuse of discretion or contrary to law. The Petition is procedurally barred. For the foregoing reasons, the Court will adopt the Magistrate Judge’s Report and Recommendation [16] as the opinion of this Court. Petitioner Freddie Donnell Ross’s Petition for Writ of Habeas Corpus will be dismissed.

Petitioner had filed a Motion to Request Credit for Time Served [13] on May 11, 2012, which the Magistrate Judge did not address in his Report and Recommendation. Petitioner appears to be challenging the manner in which his municipal court sentence or sentences were computed or are being carried out. In conducting habeas review, a federal court is limited to decided whether a conviction violated the Constitution, laws, or treaties of the United States. *Estelle v. McGuire*, 502 U.S. 62, 68 (1991). It is not in the province of this Court to reexamine state-court determinations on state-law questions. *Id.* Additionally, Petitioner has not shown that the pre-sentence time credit he alleges was not given to him was actually earned, or that any such calculation was incorrect. Nor has he alleged any

violation of federal law. The issue of credit for time served is not properly before this Court. To the extent that it is properly before the Court on habeas review, again, Petitioner has not exhausted this issue in state court. The Court will also deny Petitioner's Motion to Request Credit for Time Served [13].

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [15] of Chief United States Magistrate Judge John M. Roper, entered in this cause on July 24, 2012, is adopted in its entirety as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, the Motion to Dismiss [12] filed by Respondent on May 3, 2012, is **GRANTED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, the Motion to Request Credit for Time Served [13] filed by Petitioner Freddie Donnell Ross on May 11, 2012, is **DENIED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Petitioner Freddie Donnell Ross's Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254, is **DISMISSED**. A separate judgment in accordance with this Order will be entered, as required by Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 20th day of September, 2012.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE